

MT LEGISLATIVE HISTORY

Chapter 570 1987

Bill H 286 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 06 ☒ C

Hearing Date(s) Mar 24 ☒ C

Feb 27 ☒ C

Mar 27 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 23 ☒ C

Mar 27 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 286

INTRODUCED BY SPAETH, LYBECK, TVEIT, MEYERS, COBB,
SWYSGOOD, SALES, KELLER, BENGTSON, HAYNE, GILBERT,
POFF, KOEHNKE, SCHYE, COMPTON

IN THE HOUSE

JANUARY 19, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 23, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 24, 1987 PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 96; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

APRIL 8, 1987

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

APRIL 10, 1987

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 11, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 286
 2 INTRODUCED BY Spencer Lybuck, Trevis Thompson, Deb
 3 Samuel Heller, Wayne Gilbert, Jeff Kohlhaas
 4 SALES, Benetton
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DUTIES
 6 AND LIABILITIES OF IRRIGATION DISTRICTS AND PRIVATE PERSONS
 7 OR ENTITIES OWNING OR OPERATING IRRIGATION DITCHES IN REGARD
 8 TO PERSONAL INJURY AND PROPERTY DAMAGE; AND PROVIDING AN
 9 APPLICABILITY DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Irrigation ditches -- duties relating to
 12 safety. An irrigation district or private person or entity
 13 owning or operating irrigation ditches must keep irrigation
 14 ditches in good general repair and condition, but has no
 15 duty to:

- 16 (1) erect fences;
- 17 (2) install grates or other protective devices where a
- 18 ditch goes underground or under a bridge or other object; or
- 19 (3) prevent access to ditches by persons or animals.

20 Section 2. Irrigation ditches -- nonliabilities. An
 21 irrigation district or private person or entity owning or
 22 operating irrigation ditches is not liable for:

- 23 (1) personal injury or property damage resulting from
- 24 floodwaters caused by rainfall or other weather conditions
- 25 or acts of nature;

- 1 (2) personal injury or property damage occurring on
- 2 another's land and caused by water seepage that existed or
- 3 began before the injured person first arrived on or obtained
- 4 an interest in the land or before the damaged property was
- 5 first placed on the land;

- 6 (3) injury to a person or property while, without
- 7 authorization of the district, the person or property is on
- 8 land or water controlled by the district; or

- 9 (4) death from a drowning.

10 Section 3. Attorney fees in action against irrigation
 11 district. In an action against an irrigation district for
 12 personal injury or property damage arising from irrigation
 13 district operations or on land or water controlled by the
 14 district, the prevailing party is entitled to costs and
 15 attorney fees from the opposing party.

16 Section 4. Requirement for approval of provisions for
 17 nonliability for personal injury, death, and property
 18 damage. Because sections 1 and 2 limit the duty and
 19 liability of irrigation districts, a two-thirds vote of each
 20 house of the legislature is required for enactment of
 21 sections 1 and 2. If sections 1 and 2 are not approved by
 22 the required vote, they are void and section 3 is valid.

23 Section 5. Applicability. This act applies only to
 24 claims filed after the effective date of this act.

-End-

INTRODUCED BILL
 HB-286

-2-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB286, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would regulate the duties and liabilities of irrigation districts and private persons or entities owning or operating irrigation ditches in regard to personal injury and property damage.

ASSUMPTIONS:

1. The proposed law limits the liability of keeping irrigation ditches in good general repair and condition to the private person or entity owning or operating irrigation ditches.
2. The Lands Department grants easements for irrigation ditches constructed on trust lands, but does not own or operate irrigation systems.
3. The Department of Natural Resources and Conservation presently assists its project users to "...keep irrigation ditches in good general repair and condition." The Department plans to continue this practice regardless of the status of this bill.
4. The Department of Natural Resources and Conservation does not budget for defense in regard to liability suits against irrigation districts.

FISCAL IMPACT:

There is no fiscal impact to the Department of State Lands or the Department of Natural Resources and Conservation.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

This bill may reduce the liability insurance premiums paid by irrigation districts. Not data is available on current total premium paid.

David L. Hunter DATE 1/24/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Gary Spaeth DATE 26 Jan 87

GARY SPAETH, PRIMARY SPONSOR

Fiscal Note for HB286, as introduced.

HB-286

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NO CONCURRENCE IN AS AMENDED DATE
40	1/27/87	1/27/87	2/19/87			2/19/87					
41	1/16/87	1/28/87	2/12/87			2/12/87					
56		2/12/87	2/14/87			2/14/87					
62	1/17/87	2/5/87	2/12/87	2/12/87							
67	1/17/87	1/29/87	1/29/87	1/29/87							
68	1/17/87	2/3/87	2/3/87 tabled								
83	1/19/87	1/30/87				2/5/87					
84	1/19/87	1/30/87	2/19/87			2/19/87					
86	1/19/87	2/6/87				2/23/87					
91	1/19/87	1/27/87	Referred to Highways Committee.								
01		2/5/87	failed to meet deadline								
05	1/20/87	2/5/87	2/6/87	2/6/87							
09	1/20/87	1/29/87	2/3/87			2/3/87					
16	1/20/87	1/28/87				2/19/87					

a separate sheet for Senate Bills, House Bills, and Resolutions.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NOS. 212 AND 219:
Rep. Darko asked Rep. Holliday if the insurance companies have said that with the passage of these bills, the rates will be frozen. Rep. Holliday stated there has not been any indication of lower rates. Rep. Darko asked her if there are any other states with this type of legislation and Rep. Holliday stated the state of Wyoming has it.

Rep. Bulger asked Mr. England if there are more problems underlined than just insurance. Mr. England stated the rodeo people do not have a list of serious problems. They have insurance rates that are too high. In fact, their insurance has gone up over 1,000%. Rep. Eudaily stated that it appeared that section 1 is the problem area and asked Rep. Hanson why they lumped everything together. Rep. Hanson pointed out that all activities take place in an arena and the primary concern is in this area. She also wanted cutting horses included in the bill.

Rep. Hanson closed the hearing by stating she believed HB 212 was simply asking for a clear definition of rodeo activities that take place. She urged support for the bill so that a sport that is Montana at its best, is not eliminated. She further stated she supported HB 219 wholeheartedly.

Rep. Holliday closed the hearing on HB 219.

HOUSE BILL NOS. 146 AND 286: Rep. Spaeth, District No. 84, sponsor, stated these bills dealt with irrigation and irrigation ditches and the liability that has arisen as a result of some of the problems encountered in the last few years. Rep. Spaeth pointed out that in HB 146, directors, officers, and other employees of private irrigation ditch operators, corporations, companies, and organizations are not civilly liable for actions and omissions within the course and scope of their employment of position, except as provided in subsection (5). The new section of the bill states this act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act. HB 286 states that an irrigation district or private person or entity owning or operating irrigation ditches, must keep irrigation ditches in good general repair and condition, but has no duty to:

- 1) erect fences;
- 2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or
- 3) prevent access to ditches by persons or animals.

He submitted an amendment to HB 286. (Exhibit A).

PROPONENTS: DEAN HALL, Superintendent of the Billings Bench Water Association, and a director of the Montana Water Development Association, stated the Billings Bench Water Association is a private non-profit corporation which was established for the purpose of providing irrigation water to its shareholders. They began to supply water in the early 1900's and there are 27,000 acres encompassed within the system that has water rights. Due to the ditch company's increased exposure by way of city growth and the liberality of the court systems, they find themselves without insurance coverage for the first time this year. He urged support for these liability bills and he submitted written testimony. (Exhibit B).

JERRY NYPEN, representing Greenfields Irrigation District and Montana Water Development Association, stated that Montana irrigators are being faced with an increasing burden of responsibility for accidents in and around their facilities - accidents involving inadvertent events not controllable by irrigators, such as drownings and physical harm to trespassers, seepage, and unpredictable washouts. He pointed out that he would like to see waterways and structures less exposed to the public, but the cost of doing so is astronomical. Undue burden placed on the irrigators by the public who choose to house and recreate along irrigation facilities is unjustified. He submitted written testimony. (Exhibit C).

ED LENHARDT, President and Director of the High Ditch Company, supported both bills.

LORENTS GROSFIELD, Montana Association of Conservation Districts, stated the liability addressed in these bills are beyond the control of the ditch companies. He urged support of both bills especially because water rights are constitutionally guaranteed.

GINGER DECOX, representing Wives and Woman Involved in Farm Economics, stated she is in support of both of the bills.

RONALD SCHOFIED, Manager of the Helena Valley Irrigation District, pointed out that these bills are reasonable and make common sense. Irrigation ditches are planned, constructed, operated and maintained for the purpose of transporting water for irrigation, period! He stated the purpose of irrigation ditches is not for boating, swimming, jogging, dump sites, dog training, ATV or motorcycle courses or such uses; other than transportation of irrigation water. He urged support. He submitted written testimony. (Exhibit D).

DUANE CALVIN, Manager of the Huntley Project Irrigation District, Ballantine, stated it would seem that at times many of us are living outside of reality, in that, we expect far more than is economically or even physically possible. This seems to be especially true when it comes to our expectations concerning irrigation ditches. HB 286 is a clear definition of what are and are not our duties and responsibilities. He submitted written testimony. (Exhibit E).

MARK ETCHART, stated he supported both bills because they are so important to Montana.

R. A. ELLIS, Commissioner of the Helena Water District and Director of the Montana Water Development Association, stated that they were recently notified that there will be no more liability insurance for their directors. They support both bills.

MONTANA CATTLEMEN'S ASSOCIATION INTERNATIONAL, submitted written testimony. (Exhibit F). They stated this is one of the most timely and appropriate bills that will come before the committee. In the uncertain legal climate in which all Montanans now live, a law to clarify the duties and liabilities of ditch owners could not be more welcome. Irrigation water is the lifeblood of a majority of Montana ranching operations. Irrigation could be considered the largest source of new wealth and basic economic activity in the state. They urge a "do pass" on HB 286 and hope this important legislation receives the support of the necessary two-thirds on the House Floor.

OPPONENTS: KARL ENGLAND, Montana Trial Lawyers Association, addressed HB 146 first, stating that the bill needed some correcting but the association was not an opponent to it. The change he proposed is found on page 3, line 10, subsection (a) which should contain the word, "within". He further stated that HB 286 imposed a duty upon the operators of an irrigation ditch, to keep ditches in good repair and condition, and then it defines the scope of that duty. He pointed out that in populated areas there should be a duty to keep ditches in good repair and install grates in dangerous places of public access. The bill states that if there is a drowning, the ditch company does not have any liability. This is not a good bill. It may save the companies some money, in cases that they win, but it will cost them a substantial amount of money in cases they lose.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 146 AND 286: Rep. Addy asked Rep. Spaeth if the language on page 2 of HB 286, the injury to a person who is trespassing, is that broad enough language to protect ditch companies from

drowning suits that is found in subsection 4. Rep. Spaeth stated that Mr. England has brought up a good point in that he felt no one should be excused from actions gross or wilful and perhaps this should be amended.

Rep. Grady asked Mr. England about section 1 and wondered if that could be amended. Mr. England stated that it could be amended successfully.

Rep. Spaeth closed the hearing by stating that ditch companies are very important for the State of Montana and this will give them peace of mind. He suggested that the committee work on amendments for HB 286. His overview of the bills is that they do not state anything different from the last ten years but times are changing and there needs to be clarification in certain areas.

HOUSE JOINT RESOLUTION NO. 13: Rep. Keenan, District No. 66 submitted guidelines for the fair treatment of child witnesses in cases where child abuse is alleged. HJR 13 urges that the State of Montana follow the American Bar Association in approval and adoption of the guidelines in order to achieve procedural reform to improve the handling of child abuse cases and minimize the trauma suffered by child victims.

There were no proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE JOINT RESOLUTION NO. 13: Rep. Lory asked Rep. Keenan where the amendments to this resolution should be sent and she answered that it should go to the Supreme Court.

Rep. Keenan closed the hearing on HJR 13.

EXECUTIVE SESSION

ACTION ON HOUSE BILL NO. 305: Rep. Addy moved DO PASS. Rep. Giacometto opposed the bill. Question was called and a voice vote was taken. The motion CARRIED 9-5.

ACTION ON HOUSE BILL NO. 413: Rep. Grady moved DO PASS. Rep. Miles stated there is a dividing line right now in the statutes between misdemeanor possession of marijuana and felony possession and this bill has no limit for intent to sell and this bothers her. She suggested the limit of 60 grams of marijuana be the dividing line and should be put in the bill. Rep. Bulger moved to AMEND THE BILL on the bottom of section 1 to include the language of "60 grams possession of marijuana or one gram of hashish". Rep. Mercer clarified the meaning of "intent to sell" by the fact that it has to be proven that the "intent to sell" was there. Rep. Addy

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)		✓	
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

COMMITTEE

HB 286 - 146

DATE _____

SPONSOR

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624

(406)443-2520

AMENDMENT HB 286, *proposed by sponsor, Rep. Spaeth*

EXHIBIT *A*

DATE *2-6-87*

INSERT: Page 2, line 5, following "land;"

HB *#286*

"provided that such seepage does not carry toxic chemicals
onto another's land."

EXHIBIT 1DATE 2-6-87**BILLINGS BENCH WATER ASSOCIATION** # 1464

1111 MAIN

P. O. BOX 50150

BILLINGS, MONTANA 59105

I am Dean Hall, Superintendent of the Billings Bench Water Ass'n and a director of the Montana Water Development Association. The Billings Bench Water Association is a private non-profit corporation which was established for the purpose of providing irrigation water to its shareholders. We began to supply water in the early 1900's. There are 27,000 acres encompassed within the system that has water rights.

When the ditch was first constructed the area was rural farm land. The city has grown in size and its boundaries encompass approximately sixteen miles of main canal, plus many miles of laterals. Schools, pa-trailer courts, housing projects, etc. have been built against the ditch right-of-way. This growth has subjected the ditch company to potential liability. This liability concerns the possibility of persons falling into the ditch as well as the liability due to claims being filed in the event of ditch bank failure. The high surface water table is an exposure for liability. These problems have caused the ditch company to become uninsurable.

We spend from \$800.00 to \$1,000.00 per mile of ditch for operational costs every year.

Due to the ditch company's increased exposure by way of city growth and the liberality of our court systems, we find ourselves without insurance coverage for the first time this year.

Under normal times, the profit margin experienced by farmers per acre does not allow the absorption of heavy per acre assessments. Under the present agricultural crises, the situation is even worse. As a consequence, the BBWA finds itself unable to handle what it foresees a potential liability. In addition, the farmers supporting the ditch company do not have the financial ability to absorb these costs. It is absolutely imperative that legislation be passed which would protect us from litigation for claims for which we have no control. Limiting damages to reasonable amounts, and relieve us of liability for damages for personal injury or property damage resulting from the operation of the system, for which we have no control, and which would be financially unable to change.

Water is one of our State's most valuable asset. It is the livei-hood of our farmers. Without it our farmland would be barren again, much of the state's economy rests with the farmers and ranchers. The farm prices are down... We cannot take away the water, which would also take away the ability to raise crops. If payment of these claims for damages results in loss of our being able to operate the ditch which furnishes the much needed water to the farmers and ranchers, the whole state will suffer economically.

I urge you to support this liability bill.

I am representing Greenfields Irrigation District and Montana Water Development Association and testifying in favor of HB 286.

Montana irrigators are being faced with an increasing burden of responsibility for accidents in and around their facilities - accidents involving inadvertent events not controllable by irrigators, such as drownings and physical harm to trespassers, seepage, and unpredictable washouts. I will give you the magnitude of the exposure in Montana - there are about 3½ million acres irrigated, the greatest portion accomplished by diverting water from live rivers and streams and distributing it through open canals and laterals. There are roughly 25,000 miles of these waterways and include roughly 125,000 control structures.

We would like to see these waterways and structures less exposed to the public, but the cost of doing so is astronomical. For instance, replacing an open contour ditch with a buried conduit, one carrying water to only ten farms, would cost about \$690,000 per mile. Installing high chain link fencing around ditch rights-of-way, a non-foolproof venture, would cost \$112,000 per mile and create a significant future maintenance burden. Cost per farm for fencing would be \$590,000.

We want to place very strong emphasis on the fact that the irrigation facilities in Montana were first in time, most of the 25,000 miles of waterways put in use in 1900-1920. These facilities carry water possessed by the State of Montana and used for the economic development and strength of Montana. Regarding them as nuisances, as is sometimes raised in legal action, is like regarding our public roads and railroads as nuisances. Undue burden placed on the irrigators by the public who choose to house and recreate along irrigation facilities is unjustified. Please vote in favor of HB 286.

Thank you.

WITNESS STATEMENT

NAME N. Ann Hall BILL NO. 14
ADDRESS Billing Board Mont DATE 2-6-8
WHOM DO YOU REPRESENT? Billing Board Water Ass
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT E
DATE 2-6-87
HB #286

Concerning: HOUSE BILL No. 286

I am Dueane Calvin, manager of the Huntley Project
Irrigation District, Ballantine, Mt.

I wish to thank you for this opportunity to speak on behalf
of the above mentioned bill, urging it's speedy passage.

It would seem that at times many of us are living outside of
reality, in that we expect far more than is economically or even
physically possible. This seems to be especailly true when it
comes to our expectations concering irrigation ditches.

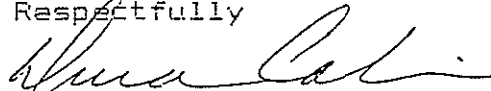
First, I want you to know that the District I represent
spends an annual average of \$1250.00 per mile for maintenance and
up-keep of it's system. This involves some 465 miles of Canals,
Laterals, Drainage systems and their associated rights-of-ways.
To be more specific that amounts to eighteen (18) dollars per
acre of irrigated land within the Project.

Second, thoughs things that we spend most of this money on
promotes safety and efficiency for thoughs that must use the
system. A few of the major items included, but are not limited to
shaping and sloping banks, smoothing bottom sections, repairing
structures, maintaining O&M roads, weed and pest control.

I guess the thrust of my thoughts are, that we (Irrigation
Ditch Operators) are all doing everything that we can within the
monetary constraints that are are placed on us by our users.
What we would ask of you, through the adoption of this bill, is
a clear definition of what are and are not our duties and
responsibilities.

We believe that House Bill 286 does that justly and again I
would urge that you adopt and move this bill forward as rapidly
as possible. Thank you.

Respectfully


Dueane Calvin

HELENA VALLEY IRRIGATION DISTRICT

3840 N. MONTANA AVE.
HELENA, MONTANA 59601
(406) 442-3292

February 5, 1987

Dear Chairman, Committee Members:

My name is Ron Schofield, I am the Manager of the Helena Valley Irrigation District.

I request that the committee pass House Bill #286. House Bill #286 is reasonable and makes common sense. Irrigation ditches are planned, constructed, operated and maintained for the purpose of transporting water for irrigation, period!

Irrigation ditches, because of the design and the structures involved, do not operate well as Flood Control Facilities. It is an entirely different purpose and we cannot expect Irrigation Facilities to successfully be Flood Control Facilities.

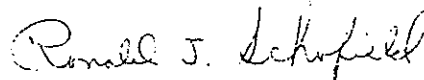
As long as water is transported in earthen canals, seepage will exist to some extent. Reasonable seepage losses have been recognized as being acceptable. Changes in land use should not place additional burdens on existing Irrigation Facilities.

The purpose of Irrigation Ditches is not for Boating, Swimming, Jogging, Dump Sites, Dog Training, ATV or Motorcycle Courses or uses; other than transportation of Irrigation Water.

Those of us who own and/or operate Irrigation Ditches, have the goal of providing Irrigation Water in the quantity needed and at the time needed; to be an economic benefit to the Irrigated lands of this state of Montana. We want to be able to concentrate our total resources on that goal.

PLEASE PASS HOUSE BILL #286.

Sincerely,



Ronald J. Schofield, Manager
Helena Valley Irrigation District

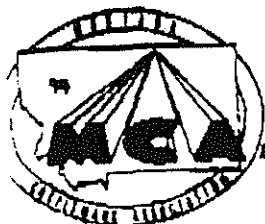
RJS/sw

WITNESS STATEMENT

NAME RON SCHOFIELD BILL NO. 28
ADDRESS 3840 N. MONTANA HELENA DATE 2-6-
WHOM DO YOU REPRESENT? HELENA VALLEY I.R.R. DIST.
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steed" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY CONCERNING HB 286

House Judiciary Committee

EXHIBIT F
DATE 2-6-87
HB # 286

Mr. Chairman, this is one of the most timely and appropriate bills that will come before your committee. In the uncertain legal climate in which all Montanans now live, a law to clarify the duties and liabilities of ditch owners could not be more welcome.

Irrigation water is the lifeblood of probably a majority of Montana ranching operations. Cattle spend more months of the year eating hay grown on irrigated fields than they do eating grass. The tremendous economic activity that characterizes the agriculture industry would be reduced to a fraction without the ability to get this water to its area of use. And, there is very seldom an alternative to the open ditch or canal for transporting and distributing irrigation water.

Irrigation could be considered the largest source of new wealth and basic economic activity in this state. As such, it deserves a clear statement of non-liabilities relating to personal injury or property damage. Representative Spaeth provides us with just that in HB 286. Given that the ditch owner has little control over the acts of persons or the effects of floodwaters, the list of non-liabilities is certainly not too generous.

As more and more businesses are threatened by the loss of their liability insurance, here is way this committee can help at least one basic industry around a potential crisis. We urge a "do pass" on HB 286 and hope that this important legislation receives the support of the necessary two-thirds on the House floor.

Thank you for this opportunity to comment.

¶ 28 However, we conclude that Brewington has alleged two separate and independent torts and that the statute commenced for each on a different date. We do not address whether the conduct alleged was a continuous tort because the result would be the same whether or not continuous tortious conduct occurred.

[8] ¶ 29 We conclude that the first independent act of bad faith alleged was the Defendants' wrongful reduction of Brewington's benefits. All of the elements of that claim based on that act existed, he had a right to bring that action, and the District Court was authorized to accept jurisdiction of that action on April 27, 1987 when the Workers Compensation Court entered judgment in his favor which restored his total disability benefits. That claim was, therefore, barred three years later on April 27, 1990.

*242 [9] ¶ 30 We conclude that Brewington has alleged a second independent act or series of acts which may or may not constitute bad faith, by his allegation that the attorney fees awarded on June 4, 1987 were wrongfully withheld until February 22, 1996. However, a bad faith action based on that conduct could not have been commenced prior to February 22, 1996 based on our decision in *Grenz*, which in turn relied on *Hayes* and *Vigue*. Therefore, no court had authority to accept a complaint based on that claim and it did not accrue pursuant to § 27-2-102, MCA until February 22, 1996. That date, then, is the date on which the applicable three-year statute of limitations commenced and since this complaint was filed on February 17, 1998, the claim based on refusal to pay attorney fees was timely.

¶ 31 For these reasons we reverse the judgment of the District Court which dismissed Brewington's claim pursuant to Rule 12(b)(6), M.R.Civ.P., and remand for further proceedings consistent with and as limited by this opinion.

W. WILLIAM LEAPHART, WILLIAM E. HUNT, Sr., JAMES C. NELSON and JIM REGNIER, JJ., concur.

Justice KARLA M. GRAY, concurring in part and dissenting in part.

¶ 32 I concur in the result reached by the Court on issue one, but not in all that is said in that regard. I

concur entirely in the Court's opinion on issue two. I respectfully dissent from the Court's opinion on issue three.

¶ 33 Before addressing my disagreements with portions of the Court's opinion, it is appropriate to comment on EFIC's reliance on the District Court's determination that § 33-18-242, MCA, "was enacted for the purpose of governing all bad faith claims." The court's determination may be correct; that is, the Legislature may well have intended to govern all "bad faith" claims by enacting § 33-18-242, MCA. If that was the Legislature's intent, however, it failed to accomplish that purpose with the plain language it used, as the Court's analysis points out.

¶ 34 It is beyond dispute that, in ascertaining the Legislature's intent, we are bound by plain and unambiguous language used in a statute and may not consider legislative history or any other means of statutory construction. See, e.g., *MacMillan v. State Compensation Ins.* (1997), 285 Mont. 202, 208, 947 P.2d 75, 78 (citation omitted). The Legislature clearly created the independent action under § 33-18-242(1), MCA, for both insureds and third-party claimants. It then clearly provided that "[a]n insured may not bring an action for bad faith in connection with the handling of an insurance claim[.]" but did not enact a corresponding prohibition for third-party claimants such as Brewington. See § 33-18-242(3), MCA. At the same time, the Legislature demonstrated its awareness of how to create separate and distinct requirements for insureds and third-party claimants when it created different provisions for the two categories of claimants vis-a-vis when the statutory action could be brought and what statute of limitations would govern. See § 33-18-242(6) and (7), MCA. The fact is that--whatever its purpose in enacting the statutory cause of action--the Legislature used plain and unambiguous language in § 33-18-242, MCA, and did not prohibit common law bad faith actions against insurers by third-party claimants. We may not insert into a statute what the Legislature has omitted. Section 1-2-101, MCA.

¶ 35 Moving to the Court's opinion on issue one, I agree with the result reached, which is that § 33-18-242, MCA, does not bar Brewington's third-party common law bad faith claim against EFIC. My disagreement is with the Court's brief discussion of *Grenz*. I agree we held in *Grenz* that, under § 33-18-242, MCA, a third-party claim could not be

brought prior to resolution of the underlying claim by settlement or judgment. I disagree that we held the same to be true regarding a common law bad faith claim. *Grenz* is not particularly clear in this regard due, perhaps, to the fact that the claimant therein was proceeding *pro se*. See *Grenz*, 243 Mont. at 487, 795 P.2d at 444. A close reading of our opinion, however, discloses that the claim had been brought--and dismissed--*243 --pursuant to § 33-18-242, MCA. In discussing the standards applicable to Rule 12(b)(6) dismissals, for example, we noted the district court's correct observation that dismissal may be appropriate "in the light of a specific statute relating to the claim[.]" *Grenz*, 243 Mont. at 490, 795 P.2d at 446. More pointedly, we set forth the language of § 33-18-242(6)(b), MCA, that a third-party claimant could not file an action under that section until the underlying claim was settled or a judgment entered in claimant's favor, and "conclude[d] that the District Court properly dismissed Mr. Grenz'[s] complaint based upon the foregoing statute." See *Grenz*, 243 Mont. at 491, 795 P.2d at 447. Thereafter, we made a passing reference to *Vigue* and *Hayes*, but it is my view that our decision was based on the statute and did not include a holding that a third-party bad faith claim against an insurer for improper adjusting could not be filed until after the underlying claim had been settled or resolved by a judgment in the claimant's favor.

¶ 36 I recognize that--on a stand-alone basis--this is a relatively minor disagreement with the Court's opinion on issue one. However, it leads directly to my disagreement with the Court's opinion on issue three and the reasons for my dissent from that portion of the opinion.

¶ 37 With regard to issue three, then, I agree that § 27-2-102(2), MCA, sets forth the proper standard for determining when the three-year statute of limitations began to run on Brewington's claims. The Court's application of that statute to Brewington's two claims is brief and somewhat conclusory, however, and, with regard to the wrongful reduction of benefits claim, without citation to authority. Its conclusion that Brewington's claim existed--that is, that § 27-2-102(2), MCA, was satisfied--in 1987 when the Workers' Compensation Court entered judgment in his favor restoring his total disability benefits apparently is based on *Grenz*, which--according to the Court's observation regarding the attorney fees

claim--"in turn relied on *Hayes* and *Vigue*." That is where my problem lies with the Court's analysis of when Brewington's claims accrued.

¶ 38 As noted above, it is my view that *Grenz* was resolved pursuant to the language set forth in § 33-18-242(6)(b), MCA, and not on any basis relating to the common law bad faith action. Without regard to the actual basis for our holding there, however, the *Hayes*- and *Vigue*-related language in *Grenz* is simply incorrect and, as a result, cannot serve as the basis for the Court's conclusions on issue three in the present case. We said in *Grenz* that "[a]s stated in *Vigue* and *Hayes* an independent action may lie *after* the underlying claim has been settled or a judgment entered in [the claimant's] favor." *Grenz*, 243 Mont. at 491, 795 P.2d at 447. We did not cite to any portion of *Vigue* or *Hayes*, however, and the fact is that neither *Vigue* nor *Hayes* contains such a statement. The sole issue in those cases was whether a third-party claimant could bring a separate action against an insurer in district court for the commission of intentional torts during the adjusting of a workers' compensation claim. See *Hayes*, 187 Mont. at 151, 609 P.2d at 259; *Vigue*, 187 Mont. at 3, 608 P.2d at 489. We did not address--either expressly or implicitly--the issue of when such an action accrues under § 27-2-102(2), MCA, or otherwise. Therefore, it does not appear to me that precedent exists with regard to when Brewington's third-party common law bad faith claims accrued.

¶ 39 Absent such precedent, we must apply § 27-2-102(2), MCA, according to its terms. In this regard, I agree with the Court that the elements of Brewington's claim based on wrongful reduction of benefits accrued on April 27, 1987, when the Workers' Compensation Court entered judgment in his favor which restored total disability benefits. As a matter of both common sense and § 27-2-102(2), MCA, no claim for wrongful reduction of benefits could have accrued prior to a judgment in Brewington's favor on the benefits issue in the Workers' Compensation Court because no wrongful act had been established.

¶ 40 Applying the same analysis to Brewington's bad faith claim relating to attorney fees mandates a conclusion opposite to that reached by the Court. Taking the allegations of Brewington's complaint in this case as true, the Workers' Compensation Court on June 4, 1987, ordered the insurer to pay attorney

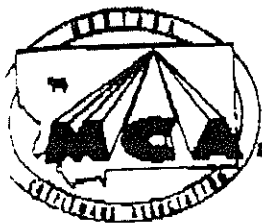
fees in the amount of 40% of Brewington's future biweekly benefits as those *244. benefits were received. The order was not appealed. EFIC apparently paid the biweekly benefits, but did not comply with the court's order on attorney fees from the time of the order until February 22, 1996, despite demands that it do so. Under these facts, it is my opinion that Brewington's bad faith claim for wrongful refusal to pay the attorney fees accrued at the time the first biweekly benefits were received without the corresponding payment of the ordered attorney fees; that is, the claim accrued when the insurer first refused to comply with the Workers' Compensation Court's order on attorney fees. At that point, the insurer's obligation to pay the fees had been established and the insurer's failure to meet that obligation became wrongful. The damage to Brewington also occurred at that time. Therefore, in terms of § 27-2-102(2), MCA, the elements of Brewington's common law bad faith claim based on wrongful refusal to pay the ordered attorney fees existed at that time, his right to maintain an action was complete, and a court was authorized to accept jurisdiction of the action.

¶ 41 The final step in the analysis, of course, is to apply the three-year tort statute of limitations contained in § 27-2-204, MCA, to Brewington's claim. That claim having accrued almost immediately after June 4, 1987, the three years during which Brewington could timely file his bad faith claim based on the wrongful refusal to pay the ordered attorney fees elapsed in the summer of 1990. Brewington filed his action in February of 1998, and, as a result, that claim was not timely under § 27-2-204, MCA.

¶ 42 I would conclude that both of Brewington's third-party common law bad faith claims were barred by the applicable statute of limitations and, on that basis, I would affirm the District Court's dismissal of his complaint. I dissent from the Court's refusal to do so.

Chief Justice J.A. TURNAGE:

¶ 43 I join in Justice GRAY'S dissent as to Issue 3 only.



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Stead" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY CONCERNING HB 286

House Judiciary Committee

EXHIBIT F
DATE 2-6-87
HB. #286

Mr. Chairman, this is one of the most timely and appropriate bills that will come before your committee. In the uncertain legal climate in which all Montanans now live, a law to clarify the duties and liabilities of ditch owners could not be more welcome.

Irrigation water is the lifeblood of probably a majority of Montana ranching operations. Cattle spend more months of the year eating hay grown on irrigated fields than they do eating grass. The tremendous economic activity that characterizes the agriculture industry would be reduced to a fraction without the ability to get this water to its area of use. And, there is very seldom an alternative to the open ditch or canal for transporting and distributing irrigation water.

Irrigation could be considered the largest source of new wealth and basic economic activity in this state. As such, it deserves a clear statement of non-liabilities relating to personal injury or property damage. Representative Spaeth provides us with just that in HB 286. Given that the ditch owner has little control over the acts of persons or the effects of floodwaters, the list of non-liabilities is certainly not too generous.

As more and more businesses are threatened by the loss of their liability insurance, here is way this committee can help at least one basic industry around a potential crisis. We urge a "do pass" on HB 286 and hope that this important legislation receives the support of the necessary two-thirds on the House floor.

Thank you for this opportunity to comment.

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Thank you.

SPECIAL INSTRUCTIONS:

DATE

MARCH 24, 1961

COMMITTEE ON

SENATE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Keith Herrin	Mont. Saddle Clubs	HB 219	✓	
Shirley Clark	Mont. High School Rodeo Assoc.	HB 219	✓	
Van Thaham	Pro Rodeo Cowboys Assn	✓	✓	
Judy Wagner	NRA & Rodeo Mnt. Wild Assoc	HB 219	✓	
BOE BURNS	Insurance	HB 219	✓	
Jim Holtz	LFC Co. Wood Dist	HB 478	✓	
S. H. Ellis	MWDH Helena Valley Irrig Dist	HB 256 HB 146	✓	
B. H. Kennedy	MWDH EAST BENTON Unit	HB 236	✓	
J. B. Brown	MWDH	HB 256	✓	
Robert Allen & Langhorn	Back Trail Riders	HB 219	✓	
Bill Mackey	Back Country Horsemen	HB 219	✓	
Debi Brunsen	Mt Assn of Conservation Dist	HB 478	✓	
Kay N. Bingham	WIFE	HB 478	✓	
James Bingham	Yout Rodeo Assn	HB 219	✓	
Jack Bingham	Yout Rodeo Assn	HB 219	✓	
Berna Travis	Mt. Farm Bureau	HB 286 HB 219	✓	
Dean Hall	Billing Benchmark	HB 146 HB 256	✓	
DON P. BROWN	SELF			
Jim Dyer	SELF			
Dilly Hughes	Lewis + Clark Fairground	HB 219	✓	
Steve Downing	Lewis + Clark	HB 219	✓	
Est Grant	POWER - Mt. Protected Area	HB 219	✓	
Jim Grant	Big Hunter	HB 146	✓	
Keith Grant	Big Hunter	HB 146	✓	
Keith Grant	Greenfield Inn	HB 146	✓	
Marcel M. Baker	Mt. Stock Growers	HB 219	✓	
James Grant	Mt. Stock Growers	HB 219	✓	

7/10/2017 25

Senate Judiciary

— 11 —

ACTION ON HOUSE BILL NO 286: Rep. Cobb moved DO PASS and moved the amendments. Discussion followed on the amendments. Rep. Bulger questioned the wording of willful and wanton conduct and seepage of toxic chemicals. Rep. Cobb explained the amendments and pointed out that care went into the amendments regarding such topics. Rep. Daily and Rep. Miles said that they had reservations about page 1, line 17, in regard to ditches that run through a town. Rep. Cobb pointed out that page 1, line 14, covered ditches that must be maintained. Rep. Mercer moved that Section 3 be segregated. A voice vote was taken and the motion CARRIED unanimously. Question was called on the amendments and a voice vote was taken. The motion CARRIED unanimously. Rep. Addy moved Section 3 by striking the section in its entirety. Question was called and a voice vote was taken. All members voted in favor of the motion with the exception of Rep. Giacometto. Rep. Addy proposed to amend page 1, line 18, striking "underground or". He felt that grates must be maintained so that they were not public danger points. Rep. Darko stated that human life was too important and liability could not be taken out. Question was called on the amendment. A voice vote was taken and the amendment CARRIED 9-5. Question was called on the motion. A voice vote was taken and the motion CARRIED 13-1. Rep. Daily voting in opposition to the bill. HB 286, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 633: Rep. Giacometto move DO PASS. Rep. Addy moved amendments on Page 2, line 22, and in the title. He stated that these amendments were proposed so that the bill would apply to either people at Mountain View School for Girls or Pinehill School for Boys. Rep. Bulger pointed out that some people at these schools may not have been convicted of any serious crime and there was a question of due process. Question was called on the amendments. A voice vote was taken and the motion CARRIED unanimously. Rep. Mercer stated he was opposed to the bill. He felt there did need to be a middle facility for the older youth. Rep. Strizich pointed out there were serious offenders and he felt what was trying to be accomplished in the bill was right but given the current state of affairs with available services for youth and young offenders, he was not sure what was best. Rep. Daily stated there had been very serious crimes committed by youth recently and there needed to be something done now. Rep. Bulger motioned to TABLE the bill. A voice vote was taken and the motion FAILED 7-8. Further discussion on the bill continued. Rep. Mercer pointed out that an amendment could be added stating that youth could be transferred to a youth facility rather than a prison after the age of 18. That would satisfy concerns that a youth would ever be sent to a prison before the age of 21, at the option of the department. Rep. Rapp-Svcrek asked Rep. Mercer if that was intended to be a motion and he stated

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

Rep. Thomas said he believed the bill was not raising the negligence threshold that much. He said herbicides are not that dangerous compared to other chemicals. He said the sprayers are bound by state law to be careful. He said we're saying that the sprayers can be careless. He said he just wanted to get them back in business again. Rep. Thomas closed the hearing on House Bill 478.

CONSIDERATION OF HOUSE BILL 146: Rep. Gary Spaeth, House District 84, introduced House Bill 146, which provides immunity and indemnification in certain civil suits against employees of ditch companies. He said ditch companies are just trying to survive. He said the bill has a procedure and exceptions in the bill, which makes it a good bill.

PROPOSERS: Ted Doney, Montana Water Development Association, said the bill is patterned after current law that covers employees of state and local governments. He pointed out if an employee of government gets sued, there is a procedure which is followed. He said this bill follows that same procedure. He said the bill only covers employees of nonprofit groups. He stated he supports the amended bill.

Karl Englund, Montana Trial Lawyers Association, supported the amended bill.

DISCUSSION ON HOUSE BILL 146: Senator Halligan did not understand page 2, (2). Mr. Doney said it is stating this bill only deals with liability of an employee.

Senator Mazurek asked if anyone would reject limiting the bill to corporations. Rep. Spaeth felt most ditch companies are not corporation orientated.

Representative Spaeth closed the hearing on House Bill 146.

CONSIDERATION OF HOUSE BILL 286: Rep. Gary Spaeth, House District 84, opened the hearing on House Bill 286, which limits the duties and liabilities of irrigation districts and private persons or entities owning or operating irrigation ditches in regard to personal injury and property. He said on the first page it states the ditch company has no duty of putting up a fence around a ditch or to install grates over the ditch. He felt grates are not safety devices. He pointed out the ditch company is not liable

for acts of nature. He said the ditch company should not be liable for seepage. He commented the ditch company should not be liable for unauthorized people being on ditch company land. He said it would have to be willful or wanton misconduct to allow the ditch companies to be liable. He said this bill will allow ditch companies to function. He said towns and cities have developed out to where older ditches are.

PROPOSERS: Jo Brunner, Montana Water Development Assn., gave a slide presentation on ditch sites and the problems ditch companies have been having with people living around the ditches.

Dean Hall, Billings Benchwater, stated there are 52 miles of ditch within the city of Billings. He said the ditch companies can't keep fences up and the cost of covering it would cost \$35 million. He said if a grate over the top of a ditch was to plug, it would take a fourth of Billings with it.

Ron Scofield, President of the Montana Water Development Association, and manager of the Helena Valley Irrigation District, stated the ditches are there to deliver water, not to be swimming pools or bike trails. He wanted to reinsert the word "underground" back into the bill. He said if one covers the ditches, it will cause pluggage, lack of water, and it could "pin" someone by the force of the water, to the grate or cover over the ditch.

Ed Lenhart, Big Ditch Company and High Ditch Co. in Billings, said covering ditches with screens will allow someone to drown in one anyway.

Dick Kennedy, East Bench Irrigation District in Dillon, said they have 546 places where the ditch goes underground. He said if the ditch company didn't keep the grates clean, they would be negligent. He said it is very hard to patrol the ditches.

Jerry Nypen, Greenfields Irrigation District, Fairfield, Montana, supported the bill. (Exhibit 6)

Ted Doney, Montana Water Development, said the bill is to prevent ditch companies from being sued because our society is "sue happy". He said some ditch companies have been sued seven times at \$50,000 a suit. He commented many companies settle because even if they could win, the court fee is expensive.

Lorna Frank, Montana Farm Bureau, testified in support of the bill.

OPPONENTS: Karl Englund, Montana Trial Lawyers Assn., stated that section 1 has a problem with the duties of a ditch company. He said the ditch companies should put up fences when it is in the best interest of the company and the water user.

PROPOSERS: George Ochenski, Montana Environmental Information Center, wanted to go on record as a proponent because the House put in the amendment about the ditch company shouldn't be immuned from liability when there are toxic chemicals in the water.

DISCUSSION ON HOUSE BILL 286: Senator Mazurek asked where the replacement section is in the bill. Rep. Spaeth said this bill deals with public and private companies which have different immunity statutes from each other. He said this bill has to give two-thirds vote as far as limitations on public immunity, and if the vote fails to get a two-thirds vote in the Senate, then the sections 3 and 4 would apply.

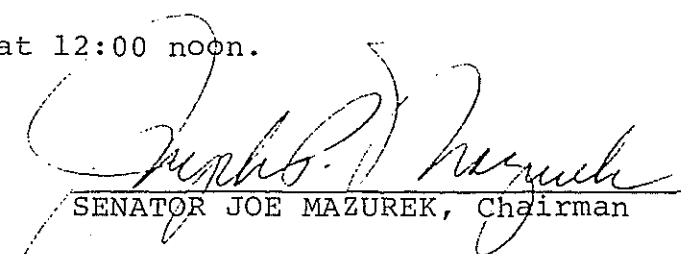
Senator Beck asked if the chemical that kills moss in ditches will make the ditch company liable under the amendment George Ochenski talked about.

Mr. Ochenski said the amendment could stop the companies.

Senator Beck asked Mr. Englund to further explain his position on ditch companies duties in putting up fences. Mr. Englund asked what Senator Beck would say if a school were built right along an open ditch.

Representative Spaeth closed by saying he understood the concern for the word "underground" being placed back in the bill. He said we should remember people are fascinated with water and they always will be, so something has to protect the ditch companies.

The meeting adjourned at 12:00 noon.


SENATOR JOE MAZUREK, Chairman

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 3

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE March 24 1987BILL NO. HB 286 Jerry Nypen

Mr. Chairman and members of this Senate Judiciary Committee: I represent Greenfields Irrigation District, Fairfield, Montana, a proponent of HB286. We see this issue as a question whether agricultural water user entities are responsible for the protection of persons who confront or intrude on water conveyance facilities.

The problem is a big one. There are roughly 3½ million acres irrigated in Montana, the greatest portion accomplished by diverting water from live rivers and streams and distributing it through open canals and laterals. There are roughly 25,000 miles of these waterways which include roughly 125,000 water control structures, all of which can present some degree of risk. It is no secret that we are attracted to water to the point that the most attractive housing property is near live streams - oftentimes manmade waterways. Most recreation activities hone in or near facilities of water. The problem is not just around the city of Billings. There is not any place these days where the public will not be found near irrigation facilities.

One could assume that irrigation facilities could be buried or at least fenced to protect persons or animals. Cost to do so is astronomical and, to the water user, just not feasible. For instance, replacing an open contour ditch with a buried conduit, one carrying water to only ten farms, would cost about \$690,000 per mile. Installing high chain-link fence around ditch rights-of-way, a helpful but not fool-proof venture, would cost \$112,000 per mile and would create a significant future maintenance burden. The cost per farm of fencing ditch rights-of-way could exceed one-half million dollars.

We need to keep in mind that most of the 25,000 or so miles of waterways were constructed and put in use between 1900 and 1930. It is very clear that water user should maintain first-in-time privilege as this bill will allow for in the case of seepage.

We haven't had many problems in being held responsible for damages experience by the intruder, but our biggest problem, of course, is maintaining liability insurance. We don't know, insurance companies don't know, and the courts are not certain what an irrigation entity's responsibilities are. This bill will certainly help clarify this. Please vote for its passage. Thank you.

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

---BILL NO---	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0277	2/23	3/17		CONCUR AS AMENDED		3/17
CONNELLY, MARY ELLEN			IMPOSING A DRIVER'S LICENSE REINSTATEMENT FEE TO FUND COUNTY DUI PROGRAMS			
HB0283	2/12	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION CHANGE CUSTODIAN MOVES; OBSTRUCT VISITATION BASIS CUSTODY CHANGE			
HB0284	3/02	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION INTERFERENCE AS A CRIME			
HB0286	3/02	3/24		CONCUR AS AMENDED		3/27
SPAETH, GARY			PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY OF IRRIGATION DISTRICTS			
HB0301	2/16	3/06		CONCUR		3/6
RAPP-SVRCEK, PAUL			NEGLIGENT ENDANGERMENT AND NEGLIGENT VEHICULAR ASSAULT CRIMINAL LAWS			
HB0309	2/23	3/23		CONCUR AS AMENDED		3/26
QUILICI, JOE			GENERALLY REVISING THE CRIME VICTIMS COMPENSATION ACT			
HB0326	2/10	3/05		CONCUR AS AMENDED		3/5
ADDY, KELLY			CREDIT FOR TIME SERVED ON SENTENCE WHEN PROBATION IS REVOKED			
HB0335	2/17	3/03		CONCUR AS AMENDED	Referred back 3/3	3/3 3/4
PISTORIA, PAUL			ALLOW PRIVATE PARKING SERVICE TO ENTER AGREEMENT WITH LOCAL GOVERNMENT			
HB0344	3/02	3/18		CONCUR AS AMENDED		3/19
ASAY, TOM			REVISE TIME LIMITS FOR MEDICAL MALPRACTICE ACTIONS			
HB0353	2/10	3/23		CONCUR		3/23
GOULD, BUDD			INCLUDING DENTISTS IN DOCTOR-PATIENT PRIVILEGE			
HB0367	2/16	3/23		CONCUR		3/23
MILLER, RON			FURNISHING HUMAN TISSUE A SERVICE AND NOT A SALE			

Senator Halligan inquired why the department allows the probation officer to issue warrants and make arrests, but won't let them carry guns. Mr. Chisholm answered that most of these arrests are made in the office, not in a live arrest. He said we don't want them to make a live arrest unless a police officer is with him.

Senator Pinsoneault asked Mr. Chisholm if he has ever made an arrest. He answered no.

Senator Pinsoneault questioned if parole officers are carrying guns now. Mr. Chisholm said many probably are. Senator Pinsoneault asked Mike McCarty if he was suggesting going out and making an arrest all by himself. Mr. McCarty said he does all the time because the parolee usually doesn't like cops around, and a lot of times he has no time to call the police.

Senator Blaylock asked if probation officers want the gun all the time. Mr. McCarty said he did not want it during the day, but he did at night. He stated parole officers are on call 24 hours a day.

Representative Dave Brown closed the hearing on HB 610.

ACTION ON HOUSE BILL 146: Senator Crippen moved HB 146 BE CONCURRED IN. The motion carried.

ACTION ON HOUSE BILL 286: Senator Crippen moved HB 286 BE CONCURRED IN. Senator Mazurek explained the sponsor of the bill wanted the words "underground or" put back in on page 1, line 21 and page 3, line 16. Senator Beck made a substitute motion. The substitute motion carried. Senator Beck moved HB 286 BE CONCURRED IN AS AMENDED. The motion carried with Senator Yellowtail voting no.

ACTION ON HOUSE BILL 478: Senator Crippen moved the bill BE CONCURRED IN. The rest of the committee wanted to have the bill laid on the table.

ACTION ON HOUSE BILL 740: Jim Haynes distributed amendments for HB 740. (Exhibit 8) Senator Crippen moved the amendments. Mr. Haynes said percentages are more accurate in the State Treasurer's office. Senator Galt and Senator Yellowtail were upset with the percentage the Department of Livestock ended up with. Senator Mazurek said to strike amendment 1 and 3; it will cut the General Fund. Senator Crippen's motion carried with those changes. Senator Brown moved HB 740 BE CONCURRED IN AS AMENDED. The motion carried.

SENATE

STANDING COMMITTEE REPORT

March 27 19⁸⁷

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 286

Third reading copy (blue)
color

- Personal injury and property damage liability of irrigation districts.
Spaeth (Lybeck)

Respectfully report as follows: That HOUSE BILL No. 286

~~XXXX~~

be amended as follows:

1. Page 1, line 21.

Following: "goes"

Insert: "underground or"

2. Page 3, line 16

Following: "GOES"

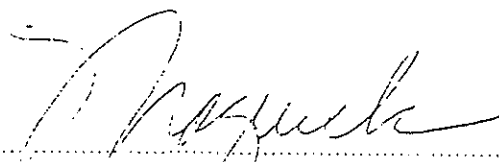
Insert: "underground or"

~~XXXX~~

~~XXXXXXXXXX~~

AND AS AMENDED

BE CONCURRED IN



3-27-87
14
5:05